

OFFICE OF THE ATTORNEY GENERAL



Correction
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Honorable R. G. Britton
Commissioner
Alabama Board of Corrections
101 South Union
Montgomery, Alabama 36130

Prisons and Prisoners -
Confiscation of Currency

Unless the Handbook of Rules and
Information for Inmates is amended,
money confiscated from inmates may
be deposited only in the State of
Alabama General Fund.

Dear Commissioner Britton:

Reference is made to your request for an opinion from the
Attorney General as to the following matter:

"Inmates in penal institutions operated
by the Board of Corrections are typically pro-
hibited from possessing any type of currency.
Money is considered contraband and is confis-
cated when found in an Inmate's possession.

In the past, the Board of Corrections
has maintained detailed records of all con-
fiscated currency and has given the Inmate
from whom the money was confiscated, credit
for the amount collected. This procedure has
led to a number of serious problems, including
encouragement of drug traffic within our insti-
tutions since, as noted, the confiscated money
is credited to the Inmate.

Therefore, I respectfully request an
opinion by your office regarding alternative
methods for disposing of currency. In par-
ticular, may the money be deposited in the
Inmate welfare fund. This fund was established
to purchase items for which funds have not

been specifically appropriated, such as recreational materials for all inmates. In addition, could confiscated currency be donated to charity?"

The law is well settled that prison inmates necessarily suffer limitation of rights, including property rights, enjoyed by ordinary citizens. The state has a compelling interest in maintaining security and order in its prisons and, to the extent that it furthers this interest in reasonable and nonarbitrary ways, property claims by inmates must give way. Sullivan v. Sgt. Ford, Classification Officer, et al., Slip Opinion No. 79-2332 (5th Cir. Jan. 4, 1980). Accordingly, the courts have been very reluctant to interfere with prison administration regarding property rights of inmates except where prison regulations are found to be unreasonable or arbitrary. Hill v. Estelle, 537 F.2d 214, 215 (5th Cir. 1976).

Code of Alabama 1975, §14-3-36 states:

"The officer in charge of any prison or camp must take in charge any property, money or other thing of value in the possession of any convict at the time of the delivery of such convict to him and shall pay or deliver the same to such person as the convict may in writing direct, to the convict on his discharge or to his personal representative in case of his death previous thereto, and should no personal representative be appointed within six months after his death, then into the state treasury."
[Emphasis added.]

This Code section refers to a convict's personal effects (e.g., money) being taken at the time of his/her entrance into a prison or camp. It is the only reference in Alabama law to confiscation of money found on an inmate. However, the Handbook of Rules and Information for Inmates, page 23 reads as follows:

"Money intended for you [the inmate] may be sent in by bank cashier's check or U.S. Postal Money Order, and will be credited to your account for your use. If

your relatives wish to send money, tell them not to send currency or cash, but to send a bank cashier's check or U.S. Postal Money Order. Any money remaining on your account at the time you leave the institution will be paid to you. Money may be left to your account by your visitors, and a receipt will be issued."

It should be noted that, per this Rule, an inmate is permitted to have ownership, but not possession, of authorized currency in his/her inmate banking account. The Handbook, page 23, also speaks to the issue of free world or green money being taken from an inmate once the inmate is assigned to any of the various prisons in the system:

"Inmates assigned to Kilby Correctional Facility, Draper Correctional Center, Fountain Correctional Center, and Holman Unit are not allowed to have free world or green money in their possession. All such money will be placed on deposit to the rightful owner."

Once in the system, any money found on an inmate becomes contraband and the Rule, page 23, states:

"Contraband money to which rightful ownership has not been established will revert to the State of Alabama General Fund."

By virtue of the confiscated money being valuable contraband, the "rightful" owner of same will be difficult, if not impossible, to positively establish. Thus, per the Rule, confiscated contraband money will revert to the State of Alabama General Fund.

Although the Alabama law does not specifically grant authorization for the confiscated money to revert to the State of Alabama General Fund, the Rule appears to be reasonable and nonarbitrary because of the many reasons justifying its existence. Money in the personal possession of an inmate invites attack by other inmates; inmates with such unauthorized funds are in a better position to escape, to procure drugs, or to bribe guards or other prison employees; returning confiscated contraband money to an inmate

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encourages and rewards that inmate's participation in breaking the prison rules concerning possessing money. Currency in the personal possession of an inmate serves no useful purpose and poses a significant potential for mischief. Sullivan, supra.

Thus, in that all inmates are given a copy of the Handbook upon entering the prison system, notice has been served on all inmates regarding the prison regulation on currency. Accordingly, money which is confiscated becomes contraband and as such may revert to the State of Alabama General Fund (i.e., the fund used by the Board of Corrections for operations, maintenance, etc.) It is possible for this confiscated currency to be deposited in or revert to the Inmate welfare fund, charity, or some other reasonable and worthwhile recipient. However, these other "recipients" may receive the confiscated currency only in accordance with an amendment in the above-cited portion of the Handbook to that effect.

If our office can be of further assistance, please do not hesitate to call on us.

Sincerely,

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Attorney General

By-

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MEB/dwm